

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 73 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL

and

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

BHIKHABHAI D HARIJAN & ANR.

Appearance:

MR S T MEHTA, APP for the Appellant.

RESPONDENTS served.

CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE M.H.KADRI
Date of decision: 25/11/96

ORAL JUDGEMENT (per KADRI, J.)

The State of Gujarat has filed this appeal under S.378 of the Code of Criminal Procedure, 1973, challenging legality and validity of the judgment and

order dated 26.9.1984, passed by the learned Sessions Judge, Rajkot, in Sessions Case No. 28 of 1984, whereby the learned Sessions Judge acquitted the Respondents for the offences punishable under S.302 read with S.114 of the I.P.Code and Ss.37(1) and 135 of the Bombay Police Act.

2. In brief, the prosecution case is that deceased Mangu Govind Bhil used to reside at Old Bhilvas locality in Rajkot City. On 17.3.1984, in the morning hours, deceased Mangu Govind had gone to the accused persons, and at that time, some dispute took place between them with regard to sprinkling of colour as it was the second day of Holi. At that time deceased Mangu Govind abused accused no.2 and in turn accused no.2 slapped the deceased. It is further the prosecution case that at about 2.30 p.m. on the said day, the deceased had returned back to Harijanvas locality alongwith his companions who are said to be eye-witnesses to the incident. At that time, it is alleged that accused no.2 caught hold of the deceased while accused no.1 inflicted knife blows on the deceased, as a result of which the deceased succumbed to the injuries. A mobile police van was informed about the incident by an unknown cyclist, and therefore, the police rushed to the scene of occurrence and removed the deceased to the hospital, where he was declared to be dead. A formal complaint came to be registered by eye-witness Amarsinh Muliyani before PSI Sidiqui. PSI Sidiqui, after recording the statements of witnesses and after completing the investigation filed charge-sheet against the accused persons in the Court of the learned Chief Judicial Magistrate, Rajkot. As the offence under S.302 is exclusively triable by the Court of Sessions, the case was committed to the Sessions Court for trial and was numbered as Sessions Case No. 28 of 1984.

3. Charge Ex.2 was framed against the accused, which was read over and explained to them. The accused pleaded not guilty to the charges and claimed to be tried. In order to prove its case, the prosecution examined the following witnesses :

- (i) PW 1 Ex. 9 - Dr.Dipak Shantilal Mehta,
- (ii) PW 2 Ex. 13 - Bhupatray Parshottam Tank,
- (iii) PW 3 Ex. 16 - Amarsinh Vaghji,
- (iv) PW 4 Ex. 17 - Vinod Parshottam Bhil,
- (v) PW 5 Ex. 18 - Mansukhlal Bhagwanji,
- (vi) PW 6 Ex. 19 - Jaysukhlal Jivanlal,
- (vii) PW 7 Ex. 21 - Kalubhai Bhanji,
- (viii) PW 8 Ex. 23 - Abdul Kadar Vora,

- (ix) PW 9 Ex. 33 - Chandubha Prabhatsinh Parmar,
- (x) PW 10 Ex. 34 - Dungarshi Raghavji,
- (xi) PW 11 Ex. 37 - Visaman Somla Chavda,
- (xii) PW 12 Ex. 39 - Bhavubha Shivubha Sarvaiya,
- (xiii) PW 13 Ex. 43 - PSI Ayazuddin N. Sidiqi.

The prosecution also produced documentary evidence such as postmortem notes, panchnama, report of the Forensic Science Laboratory, map of the scene of offence, discovery panchnama, etc. After the prosecution evidence was over, the statements of the accused were recorded under S.313 of the Code. Defence of the accused was that they were falsely implicated in the case. However, the accused did not examine any witness in support of their defence.

4. After taking into consideration the evidence led by the prosecution and hearing the parties, the learned Judge recorded the following conclusions :

- (a) Deceased Mangu Govind died a homicidal death on 7.3.1984.
- (b) Though the case of the prosecution is of two successive incidents, the complainant and the alleged eye-witnesses referred to only one incident.
- (c) The medical evidence shows that there were three stab injuries, whereas the complainant and alleged eye-witnesses speak of only two stab injuries. Thus there is contradiction in evidence of eyewitnesses and medical officer.
- (d) Though the case of the prosecution is that while accused no.2 had caught hold of the deceased, and the accused no.1 had inflicted stab injuries, the complainant had admittedly stated before the police while lodging the complaint that accused no.2 had given the knife blows.
- (e) The alleged eye-witness Vinod Parsottam has also stated during his oral evidence at Ex.17 that accused no.2 had inflicted knife blows, after taking out the knife from his left side, which is not prosecution case.
- (f) Though it was never the case of the prosecution the alleged eye-witness Vinod Parsottam Ex.17 said that both the accused persons had given kicks and fist blows to the deceased, but his say

is not supported by medical evidence.

- (g) In the same way, quite contrary to the case of the prosecution and the Medical evidence on record, Vinod Parsottam Ex. 17 has deposed that accused no.2 had assaulted the deceased with a stick which was later on found lying on the spot.
- (h) The say of the complainant and eye-witnesses that they had disclosed their names as the eye-witnesses and those of the accused persons as the assailants is falsified by the police evidence on record.
- (i) The evidence of investigating agency, oral as well as in form of entries in the M.L.C.Hospital Register, Police Station Diary and Log Sheet, go to establish very clearly that the police officers including the two Head Constables in Mobile Van No.4 who had rushed to the spot of the occurrence within moments, despite their efforts, were not able to know the names of the assailants and the eye-witnesses and the alleged eye-witnesses who had accompanied the injured to the Hospital in the same van had not disclosed anything to the two Head Constables in the van or to the Hospital Duty Head Constable regarding their having seen the accused persons assaulting the deceased.
- (j) Though the formal complaint is stated to have been recorded at 2.30 p.m. on the day of the occurrence, i.e. 17.3.1984, the F.I.R. had reached the Magistrate on 19.3.1984 at 12.15 p.m. and delay in despatch is not explained by the prosecution.

5. On the basis of the above referred to conclusions, the learned Sessions Judge acquitted the accused of the charges levelled against them which has given rise to filing of the present acquittal appeal by the State of Gujarat.

6. Mr. S. T. Mehta, ld.APP has assailed the judgment and order of the learned Sessions Judge, and argued that the evidence of the three eye-witnesses is natural and inspiring confidence which proves that accused no.2 caught hold of the deceased and accused no.1 gave knife blows on the person of the deceased. It is further argued that on 7.3.1984 in the morning hours an

incident had taken place wherein the accused had sprinkled colour on the deceased whereupon the deceased had abused accused no.2, and thus because of this previous incident, accused no.1 and 2 had animosity towards the deceased and as a result, they had attacked him in the afternoon and committed his murder. He further contended that the prosecution has proved the case against the accused beyond reasonable doubt and accordingly this appeal should be allowed.

7. The learned APP has taken us through the oral as well as the documentary evidence produced on the record of the case. We have also gone through the oral as well as documentary evidence in minute details. However, it is difficult to arrive at a finding contrary to the one recorded by the learned Sessions Judge. In material particulars, the eye-witnesses' stand contradicted with each other and medical evidence. Their testimony is not reliable. In view of evidence of police officials there is no manner of doubt that the so called eyewitnesses had not seen the incident at all. These conclusions of facts arrived at by the learned Judge which are mentioned in detail in para 4 of this judgment are eminently just and deserve to be upheld. On the evidence led by prosecution, no other view is possible. The learned Sessions Judge has given cogent and convincing reasons for acquitting the respondents-accused. We see no valid reason to interfere with the conclusions arrived at by the learned Sessions Judge, in this acquittal appeal. The order of the learned Sessions Judge cannot be termed as perverse or illegal and against the evidence on record.

8. This is an acquittal appeal in which court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of learned Judge who had opportunity to observe the demeanour of the witnesses. As we are in general agreement with the view expressed by the learned Judge, we do not think it necessary either to reiterate the reasons for acquittal given by the trial Court, and in our view, expression of general agreement with the view taken by the learned Judge would be sufficient in the facts of the present case. This is so, in view of the decisions rendered by the Supreme Court in the cases of (1) GIRIJA NANDINI DEVI & ORS. vs. BIJENDRA NARAIN CHAUDHARY, AIR 1967 SC 1124, and (2) STATE OF KARNATAKA vs. HEMA REDDY AND ANOTHER, AIR 1981

SC 1417. On overall appreciation of evidence, we are satisfied that there is no infirmity in the reasons assigned by the learned Judge for acquitting the accused. Suffice it to say that the learned Judge has given cogent and convincing reasons for acquitting the accused and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Judge in order to convince us to take the view contrary to the one already taken by the learned Judge.

9. For the foregoing reasons, we do not see any merits in the appeal, and the appeal is liable to be dismissed. The appeal therefore, fails and is dismissed. Muddamal articles are ordered to be disposed of in terms of the directions given by the learned trial Judge in the impugned judgment.

abraham.